

APPENDIX

Supreme Court, U. S.

FILED

SEP 16 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 77-926

GERALDINE G. CANNON

Petitioner,

v.

THE UNIVERSITY OF CHICAGO, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 28, 1977
CERTIORARI GRANTED JULY 3, 1978

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-926

GERALDINE G. CANNON

Petitioner,

vs.

THE UNIVERSITY OF CHICAGO, ET AL.,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

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RELEVANT DOCKET ENTRIES
IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

No. 75-2402 (U. Chi.)	No. 75-2724 (Nw.)	
July 18, 1975	Aug. 14, 1975	Verified Complaint filed.
Aug. 18, 1975	Sept. 19, 1975	Motion to Dismiss filed.
Sept. 11, 1975	Oct. 3, 1975	Motion to Dismiss allowed.
Sept. 18, 1975	Oct. 8, 1975	Motion to Alter or Amend Judgment filed.
	Sept. 23, 1975	Oral Argument on Motion to Alter or Amend Judgment heard.
	Sept. 26, 1975	Oct. 9, 1975 Motion to Alter or Amend Judgment allowed.
	Sept. 30, 1975	Oct. 10, 1975 Amended and Supplemental Complaint filed.
Oct. 2, 1975	Oct. 28, 1975	Motion to Dismiss filed.
Dec. 8, 1975	Dec. 8, 1975	HEW Answer filed.
Jan. 15, 1976	Jan. 15, 1976	Motion to Dismiss allowed.
Feb. 19, 1976	Feb. 19, 1976	Notice of Appeal filed.

RELEVANT DOCKET ENTRIES
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

March 3, 1976 Pre docketing conference consolidating cases for briefing and argument.
 June 4, 1976 Oral argument heard.
 August 27, 1976 Opinion filed.
 August 9, 1977 Opinion on rehearing filed.
 October 3, 1977 Order denying rehearing and suggestion for rehearing en banc entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 75C 2402¹

GERALDINE G. CANNON,

Plaintiff,

v.

THE UNIVERSITY OF CHICAGO; and DR. LEON O. JACOBSON, Dean; DR. JOSEPH J. CEITHAML, Dean of Students; and JOHN DOE and MARY ROE, the Admissions Committee; of The Pritzker School of Medicine, each individually and in their official capacities,

Defendants,

and

THE SECRETARY OF HEALTH, EDUCATION AND WELFARE, the HON. DAVID MATTHEWS, and the REGIONAL DIRECTOR OF THE OFFICE FOR CIVIL RIGHTS, REGION V, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, MR. KENNETH A. MINES, in their official capacities,

Additional Parties.

AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiff, by her attorneys, complains against defendants as follows:

Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, sections 1331,

¹ The Amended and Supplemental Complaint in the case against Northwestern University et al., No. 75C 2724, is substantially identical. (the "Nw. Am. Comp.").

1343(3), 1343(4), 1345, 1346, 2201 and 2202, this being a civil action authorized (i) by the Civil Rights Act of 1871, Title 42, United States Code, section 1983 to redress and remedy the deprivation under color of State statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States, (ii) by the Civil Rights Act of 1964, Title 42, United States Code, sections 2000c-6 and 2000c-8, as amended by Title IX of the Education Amendments of 1972, P.L. 92-318, Title 20, United States Code, section 1681 *et seq.*, to redress and remedy the denial of admission to an education program or activity receiving Federal financial assistance on the basis of sex, and in violation of written contractual assurances against such discrimination filed by or on behalf of defendants under and pursuant to section 799 of the Public Health Service Act, Title 42, United States Code, section 295h-9, with the Secretary of Health, Education and Welfare for the benefit of plaintiff and others as third-party beneficiaries, (iii) by section 7(c) of the Age Discrimination in Employment Act of 1967, Title 29, United States Code, section 626(c), to remedy discrimination in professional education and employment on the basis of age, and (iv) by sections 702 and 703 of the Administrative Procedure Act, Title 5, United States Code, sections 1009(a) and 1009(b) and sections 902 and 903 of said Education Amendments of 1972, Title 20, United States Code, sections 1682 and 1683.

Parties

2. Plaintiff, Geraldine G. Cannon, a resident of Northbrook, Illinois, is an adult female who is a citizen of the United States and of the State of Illinois.

3. All defendants transact business and are found within the Northern Federal Judicial District of Illinois, Eastern Division.

4. Defendant, The University of Chicago, a not-for-profit corporation organized under the laws of the State of Illinois,² is an institution of learning and professional education conducting its college, divisions and other schools, including The Pritzker School of Medicine, under Illinois law, custom and usage and receiving State and Federal financial assistance in the education program and activity of said school, and is an employer utilizing the service of said school as an employment agency, placement service, training school or center or other source in the hiring or recruitment of doctors of medicine regularly undertaking with or without compensation to procure doctors as employees for said university's hospitals and other employers of doctors.

5. Defendants, Dr. Leon O. Jacobson, Dean; Dr. Joseph J. Ceithaml, Dean of Students; and John Doe and Mary Roe whose identities are unknown to plaintiff at the present time, the Admissions Committee; of The Pritzker School of Medicine, are sued individually and in their official capacities. The Secretary of Health, Education and Welfare (the "Secretary"), the Hon. David Matthews, and the Regional Director of the Office for Civil Rights, Region V, (the "Regional Director"), Mr. Kenneth A. Mines, are joined as parties in this Amended and Supplemental Complaint pursuant to Rules 17, 18, 19 and 20, Federal Rules of Civil Procedure, and sued in their official capacities for the alternative relief prayed herein with respect to official action or inaction by said officials. Plaintiff believes the Secretary and the Regional Director may be aligned as plaintiffs in this case and, unless the context otherwise requires, said officials are not included in the term "defendants" as used herein.

² "under a special act of the legislature of the State of Illinois" in Nw. Am. Comp.

Facts

6. On or about October 15, 1974, plaintiff duly and timely applied for admission to the September 1975 entering class at The Pritzker School of Medicine.

7. Plaintiff presented qualifications which included completion of all pre-requisite courses of study specified by the school as requirements for admission.

8. Plaintiff presented a college grade point average and Medical College Admission Test scores within the range of such objective intellectual qualifications presented by other applicants accepted for admission to the September 1975 entering class at the school.

9. According to the information summary for The Pritzker School of Medicine furnished by defendants to the Association of American Medical Colleges and published in the *AMCAS Information Booklet for 1975-76 Entering Class*,

"Applicants are selected by the Admissions Committee solely on the basis of their ability, achievement, personality, character and motivation. The Entering Class in 1973 consisted of 104 students, of whom 18 were women, 11 were members of racial minority groups, 10 were Ph.D.'s interested in careers as medical scientists, and 43 were residents of Illinois. 92% of the Entering Class had a GPA [grade point average] over 3.2 and 88% had an average MCAT [Medical College Admission Test] score over 575."

10. On the Medical College Admission Test administered by the Association of American Medical Colleges on October 5, 1974 plaintiff scored as follows: Verbal—605; Quantitative—525; General Information—625; and Science—585, for an average MCAT score of 585.

11. On May 9, 1975 plaintiff graduated from Trinity College, Deerfield, Illinois, receiving her baccalaureate degree

cum laude with a grade point average of 3.6 out of a possible 4.0, such GPA having been 3.46 at the time of her application to the school and 3.53 at the time of initial decision on her application by the school.

12. Plaintiff presented evidence of subjective personal qualifications including reports from pre-medical advisors and instructors who have known plaintiff well, reflecting honesty, intelligence, curiosity, imagination, cooperativeness, friendliness, a willingness to work long hours and other desirable qualities, which, on information and belief, were within the tenor and quality of such subjective personal qualifications presented by other applicants accepted at the school.

13. According to the information summary for The Pritzker School of Medicine furnished by the defendants to the Association of American Medical Colleges and published in the *AMCAS Information Booklet for 1975-76 Entering Class*,

"Applicants over 30 without advanced degrees and foreign citizens without at least one year of completed studies in an American school are not encouraged to apply."³

14. Defendants discriminate against persons over 30 without advanced degrees.

15. Plaintiff is over 30 and without an advanced degree.

16. The ratio of male to female graduate students in the United States under age 30 is disproportionately greater than the ratio of male to female graduate students in the United States over 30.

³ In Nw. Am. Comp. "published in *Medical School Admission Requirements 1975-76*,

"In addition to demonstrated academic competence, the Admissions Committee will look for evidence of emotional maturity and motivation for the profession of medicine. Few applicants above the age of 30 are considered; the absolute age limit is 35."

17. More than 80% of the students entering medical schools in the United States have completed 4 or more years of college and hold baccalaureate degrees.

18. The ratio of male to female students receiving advanced degrees in the United States is disproportionately greater than the ratio of male to female students receiving baccalaureate and first professional degrees in the United States.

19. The percentage of female students for whom the period of lapse from receipt of a baccalaureate degree to the commencement of graduate study is 10 years or more is approximately 2½ times as great as the percentage of male students for whom such lapse is 10 years or more.

20. Current increases in the number of students over 30 notwithstanding current declines in college enrollments generally have been due principally to increased numbers of older women returning to school after meeting family demands upon their time.

21. Students who interrupt their education in order to support a student-spouse or to rear children are disproportionately more likely to be female than male to the point that marriage and rearing of children is the most commonly cited reason for interruption of education by female students and such reason for interruption of education is rarely cited by male students except indirectly among economic reasons generally.

22. Students who interrupt their education in order to support a student-spouse or to rear children or both are disproportionately more likely to be female, over 30 and without an advanced degree when ready and otherwise qualified to apply to a medical school than students who interrupt their education for economic, change of career or area of specialization, or other reasons frequently cited by male students for the interruption of their education.

23. The criterion against persons over 30 without advanced degrees has a disproportionately adverse effect on women on the basis of their sex.

24. The criterion against persons over 30 without advanced degrees has not been shown to predict validly success in The Pritzker School of Medicine or in medical schools or medical practice generally and is not a bona fide occupational qualification reasonably necessary to the normal practice of medicine for The University of Chicago Clinics or hospitals or other employers for whom The Pritzker School of Medicine serves as an employment agency or other source in the hiring and recruitment of doctors of medicine.

25. Alternative criteria which do not have such a disproportionately adverse effect have not been shown to be unavailable.

26. The percentage of women admitted to each class at The Pritzker School of Medicine has been disproportionately smaller than the percentage of women in the general population of the United States or the community served by the school.

27. The percentage of women admitted to each class at The Pritzker School of Medicine has been disproportionately smaller than the percentage of women receiving baccalaureate degrees in the United States or the community served by the school during such year or the preceding year.

28. The percentages of men and women students in each class of the student body of The Pritzker School of Medicine reflects discrimination against women on the basis of sex.

29. By letter dated February 25, 1975 defendant Ceithaml informed plaintiff that the Admissions Committee had completed its consideration of her application and that she was not among the applicants accepted for admission.

30. By letter dated March 5, 1975, plaintiff inquired as to the reason for rejection of her application without an interview notwithstanding the grade point average and Medical College Admission Test scores presented by plaintiff.

31. By letter dated April 10, 1975 defendant Ceithaml informed plaintiff that although her "academic credentials" were good they fell below those of accepted applicants.⁴

32. Upon subsequent telephone inquiry by plaintiff's attorney defendant Ceithaml indicated that the "academic credentials" to which he referred were not the relatively objective credentials of college grade point averages and Medical College Admission Test scores referred to by plaintiff but a more expanded and subjective concept of "academic credentials" which included the policy of discouraging application by persons over 30 without advanced degrees as well as a policy favoring applicants with Ph.D. degrees.

33. The ratio of male to female students receiving Ph.D. degrees in the United States is disproportionately greater than the ratio of male to female students receiving baccalaureate and first professional degrees in the United States and the ratio of male to female students with Ph.D. degrees in the student body of The Pritzker School of Medicine and in each class thereof is disproportionately greater than the ratio of male to female students in such student body or such class thereof.

34. Medical schools other than The Pritzker School of Medicine which express any policy concerning applicants with advanced degrees in their respective information summaries in

⁴ In Nw. Am. Comp. "By letter dated December 3, 1974 defendant Berry informed plaintiff that he had reviewed the substance of her application and that her credentials fell somewhat below those of other applicants who would be receiving serious consideration noting that the school policy set a definite upper age limit of 35 years as one of the selection factors." Para. 25.

the *AMCAS Information Booklet for 1975-76 Entering Class* do not favor or affirmatively discourage applicants with advanced degrees, particularly advanced degrees in health science fields.

35. Defendants' policy favoring applicants with Ph.D. degrees has not been shown to predict validly success in the education program or activity of The Pritzker School of Medicine or medical schools generally.

36. By letter dated May 21, 1975 plaintiff's attorney suggested to defendant Ceithaml a re-examination of the reasons for defendants' published policy discouraging applications by persons over 30 without advanced degrees in light of its potential for discrimination against women and requested reference of the matter to the individual or committee charged with particular responsibility for implementing the law and stated policy of the school against sex discrimination.

37. On or about June 18, 1975, Cedric Chernik, Assistant Vice President and Director, Office of Sponsored Programs, responded to plaintiff's attorney by telephone that statements of age preferences by medical schools appeared to be widespread so that the matter might be taken up by the Association of American Medical Colleges but that further inquiry was unnecessary with respect to plaintiff's application to The Pritzker School of Medicine because he had been informed that the policy of discouraging applicants over 30 without advanced degrees was not specifically implemented against persons such as plaintiff who actually applied in spite of the published statement of the discouragement policy in that applications of such persons were not segregated or otherwise formally subjected to special handling in order to effect such policy.

38. On information and belief, no applicant over 30 without an advanced degree has been admitted to the September 1975 entering class and Mr. Chernik was not aware of the admission of any such applicant in recent years or of any

directive, instruction or suggestion that members of the Admissions Committee not implement the published policy discouraging such applicants.

39. Plaintiff and her attorney have brought to the attention of defendants their concern about the failure of defendants to evaluate plaintiff's qualifications other than age and lack of advanced degree.

40. Letters and telephone calls brought to defendant Ceithaml's attention the failure of defendants to allow plaintiff effectively to show that she is fully able to enter The Pritzker School of Medicine in September 1975 and to successfully complete the same and engage in the practice of medicine notwithstanding her age and lack of advanced degree.

41. Plaintiff is now and continually has been intellectually, personally, academically, physically and mentally fit and able to commence, and successfully complete, the study of medicine at The University of Chicago Pritzker School of Medicine.

42. Defendants are acting under color of Illinois law, custom and usage authorizing their conduct of an institution of learning and professional education receiving State and Federal financial assistance to deprive plaintiff of rights secured by the Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1871, 42 U.S.C. § 1983, in that:

(a) plaintiff has been involuntarily placed in a class characterized solely on the basis of age and lack of advanced degree and thence subjected to arbitrary and invidious treatment by reason of such classification, in that her application for admission to The Pritzker School of Medicine was denied with the use of such classification as a material criterion, all in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and

(b) plaintiff has been arbitrarily and invidiously discriminated against because her application to The Pritzker School of Medicine has been denied on a basis utilizing age and lack of advanced degree as a material criterion without a personal interview by the Admissions Committee or any due process guarantees or rights to show that there is no sound or reasonable basis to believe such criterion validly predicts any lack of success by her in medical school or practice, all in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

43. Plaintiff is, and has been, qualified for admission to The Pritzker School of Medicine on the basis of her ability, achievement, personality, character and motivation. A material if not the sole criterion for defendants' denial of plaintiff's application for admission to the September 1975 entering class at The Pritzker School of Medicine without an interview by the Admissions Committee was her age and lack of advanced degree which is a criterion disproportionately characteristic of her sex and does not validly predict any lack of success in the education program or activity of the school. This conduct on the part of defendants is in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.*, as amended by Title IX of the Education Amendments of 1972, 20 U.S.C., § 1681(a) which provides:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,"

and the specific regulations promulgated by the Department of Health, Education and Welfare thereunder, 45 C.F.R. § 86.21(b)(2) which provide:

"A recipient [of Federal financial assistance] shall not administer or operate any test or other criterion for admis-

sion which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable."

This conduct also is in violation of the written contractual assurances against discrimination on the basis of sex in admissions to The Pritzker School of Medicine filed by or on behalf of defendants with the Secretary for the benefit of plaintiff and other applicants under and pursuant to section 799 of the Public Health Service Act, 42 U.S.C. § 295h-9 as a condition to qualification for and the receipt of payments and other benefits under said Act as well as comparable assurances required under the regulations, 45 C.F.R. § 86.4, promulgated by the Secretary under Title IX of the Education Amendments of 1972 as a condition to continuation of any Federal financial assistance. Plaintiff has exhausted or there are not available in fact administrative procedures for investigation and remedy of said violations claimed by plaintiff.

44. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein. Plaintiff is now suffering and will continue to suffer irreparable injury from the actions of defendants flowing from defendants' denial of her admission to the 1975 entering class at The Pritzker School of Medicine; thereby barring or seriously impeding plaintiff from securing an education at a medical school in Illinois receiving State and Federal financial assistance where she would ordinarily be accorded the preference applicable to her residence in the community served by the school and thereby also barring, delaying or impeding plaintiff from securing employment as a doctor of medicine. This conduct on the part of defendants is in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(b), which provides:

"It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to dis-

criminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age."

Such conduct by defendants also violates and causes the violation by others of the Illinois Act to prohibit unjust discrimination in employment because of age, Ill. Rev. Stat. Chap. 48, § 884, which provides:

"It is an unlawful employment practice for an employer:

* * * *

(2) to utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization or any other source which unreasonably discriminates against such individuals because of their age."

Printing and publication of notice of defendants' criterion discouraging persons over 30 without an advanced degree also is in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(e) which provides:

"It shall be unlawful for an . . . employment agency to print or publish, or to cause to be printed or published, any notice or advertisement . . . relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on age."

45. The Secretary has obtained and the defendants have furnished assurances satisfactory to the Secretary that The Pritzker School of Medicine will not discriminate on the basis of sex in the admission of individuals to its training programs as required by Section 799 of the Public Health Service Act, 42 U.S.C. § 295h-9. Grants, loans, guarantees or interest subsidy payments under said Act have been made by the Secretary to or

for the benefit of defendants under said Act or the Secretary has entered into a contract with or for the benefit of defendants thereunder. Said written contractual assurances were required and obtained for the benefit of plaintiff and other applicants as third-party beneficiaries. The Secretary has furnished to or for the benefit of defendants the Federal financial assistance given in consideration of said assurances by or on behalf of defendants but the defendants, as alleged herein, have failed to observe or perform their obligations against discrimination on the basis of sex under said written contractual assurances and instead continue to discriminate on the basis of sex in the admission of plaintiff and other individuals to The Pritzker School of Medicine.

46. By letter dated April 18, 1975, plaintiff filed a written complaint with the Secretary and the Regional Director alleging discrimination by defendants on the basis of sex in the denial of her admission to The Pritzker School of Medicine. Although said letter has been acknowledged no investigation or related administrative action has been taken as provided in Subpart F of Part 86 of Title 45, Code of Federal Regulations, incorporating by reference for Title IX of the Education Amendments of 1972, the enforcement procedure for Title VI of the Civil Rights Act of 1964 or as contemplated by the written assurances against such discrimination obtained by the Secretary as required by section 799 of the Public Health Service Act and the Title IX regulations aforesaid.

Relief

WHEREFORE, plaintiff respectfully prays that this Court upon the filing of this complaint advance the plaintiff's cause on the docket and order a speedy hearing thereof, and that this Court enter judgment:

A. granting a preliminary injunction pending final determination of this case prohibiting defendants from

denying plaintiff admission to The Pritzker School of Medicine utilizing the criterion of her age and lack of advanced degree or any other criteria which have not been shown to predict validly success in the education program or activity of The Pritzker School of Medicine or medical schools generally and if any such other criteria shall adversely affect her on the basis of sex, only to the extent that alternative criteria which do not have such adverse effect are shown to be unavailable;

B. granting a preliminary injunction pending final determination of this case prohibiting defendants from continuing to fail and refuse to re-evaluate plaintiff's application and credentials for admission to the September 1975 entering class at The Pritzker School of Medicine in a timely and effective manner, according no weight in such re-evaluation to her age, lack of advanced degree or any other criteria which have not been shown to predict validly success in The Pritzker School of Medicine or medical schools generally, according little, if any, weight in such re-evaluation to relatively subjective criteria, and affording plaintiff reasonable opportunity to challenge effectively other criteria, if any, on which defendants may rely if such re-evaluation shall not result in the timely admission of plaintiff to the September 1975 entering class at The Pritzker School of Medicine;

C. granting a preliminary injunction pending final determination of this case and a permanent injunction upon the final determination of this case prohibiting defendants from continuing to fail and refuse to admit plaintiff to the September 1975 entering class at The Pritzker School of Medicine;

D. declaring that the action of defendants in permitting plaintiff's age or lack of advanced degree or both to

be utilized as material criteria for the denial of plaintiff's application to The Pritzker School of Medicine without any opportunity to challenge effectively the use of any such criteria violated plaintiff's rights against arbitrary and invidious discrimination under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the Civil Rights Act of 1871;

E. declaring that the action of defendants in permitting plaintiff's age and lack of advanced degree which is disproportionately characteristic of her sex to be utilized as a material criterion for the denial of plaintiff's application to The Pritzker School of Medicine violated plaintiff's rights against discrimination on the basis of sex under the Civil Rights Act of 1964 as amended by the Education Amendments of 1972 and the contractual assurances obtained by the Secretary for the benefit of plaintiff and other applicants under the Public Health Service Act;

F. declaring that defendants' policy of permitting age or age and lack of advanced degree to be utilized as material criteria for the denial of plaintiff's application to The Pritzker School of Medicine and the printing and publication of notice of such policy violated the Age Discrimination in Employment Act of 1967 and cause The University of Chicago and other Illinois employers of doctors of medicine to violate the Illinois Act to prohibit unjust discrimination in employment because of age in utilizing The Pritzker School of Medicine as an employment agency, placement service, training school or center or other source in the hiring or recruitment of individuals for employment as doctors of medicine while such policy or practice is in effect thereby violating plaintiff's rights against unjust discrimination in employment on the basis of age prohibited by said Acts;

G. granting \$15,000 and such additional damages as plaintiff may incur after the filing of this complaint for refusal by defendants to admit plaintiff to The Pritzker School of Medicine, in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, the Civil Rights Act of 1871, and the Civil Rights Act of 1964, as amended by the Education Amendments of 1972;

H. granting \$15,000 and such additional damages as plaintiff may incur after filing of this complaint for the use by defendants of plaintiff's age and lack of advanced degree to bar, delay or impede her employment as a doctor of medicine, in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, the Civil Rights Act of 1871, the Age Discrimination in Employment Act of 1967 and the Illinois Act to bar unjust discrimination in employment because of age;

I. reasonable attorneys' fees and expenses; and

J. such other or further relief as this Court may deem to be appropriate.

Alternative Relief

In the alternative, plaintiff respectfully prays that this Court enter judgment granting an injunction prohibiting the Secretary and the Regional Director from continuing to fail to investigate promptly and take appropriate related administrative and enforcement actions, including conciliation and efforts to effect voluntary compliance, with respect to plaintiff's administrative complaint to said officials with respect to the

denial of her admission to The Pritzker School of Medicine on the basis of sex.

Respectfully submitted,

JOHN M. CANNON
 JAMES A. BURSTEIN
 WILLIAM E. SNYDER
Attorneys for Plaintiff

Note: The allegations of the original complaints in each case, verbatim the same as those in the amended and supplemental complaint except with respect to HEW and, in the case of the University of Chicago, the Federal Age Discrimination in Employment Act, were verified as follows:

STATE OF ILLINOIS }
 COUNTY OF COOK } ss.:

VERIFICATION

GERALDINE G. CANNON being first duly sworn upon oath, deposes and says that she is the plaintiff in the above entitled cause; that she has read the foregoing Complaint, knows the contents thereof and the matters and things therein alleged are true both in substance and in fact.

/s/ GERALDINE G. CANNON

Geraldine G. Cannon

Subscribed and sworn to before me
 this day of July, 1975.

[NOTARIAL SIGNATURE AND SEAL]

Notary Public

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 C 2402

[Title Omitted]

**MOTION OF DEFENDANTS
TO DISMISS THE COMPLAINT
OR FOR SUMMARY JUDGMENT**

Defendants, by their attorneys, move to dismiss the complaint or for summary judgment on the following grounds:

(a) the Court lacks jurisdiction over the subject matter of the complaint; jurisdiction is claimed under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Education Amendments of 1972, 20 U.S.C. § 1681; defendant The University of Chicago is a private educational institution and insufficient state action has been alleged or in fact exists to bring the action complained of within the purview of 42 U.S.C. § 1983; The Education Amendments of 1972 create no private rights which may be vindicated by direct judicial action;

(b) the complaint fails to state a claim upon which relief can be granted;

(c) defendants are entitled to judgment as a matter of law; the gist of the complaint is that the policy manifest in the statement respecting The University of Chicago Pritzker School of Medicine appearing in the Association of American Medical Colleges Information Booklet that applicants over 30 without advanced degrees are not encouraged to apply discriminates on the basis of sex against plaintiff, a female over 30 without an advanced degree, because, it is alleged, relatively fewer women than men

over 30 have advanced degrees; the facts are that plaintiff's application for admission to the Pritzker School of Medicine was considered on its merits and was eliminated from further consideration solely because of plaintiff's academic record and her Medical College Admission Test scores; sex, age, and lack of advanced degree were not factors in the screening of plaintiff's application; there is no genuine issue as to any material fact.

Defendants submit herewith and in support of this motion affidavits of WALTER V. LEEN, Secretary of the Board of Trustees of The University of Chicago and general counsel of The University of Chicago; HAROLD E. BELL, Vice President-Comptroller of The University of Chicago; and JOSEPH CEITHAM, DEAN OF STUDENTS, DIVISION OF THE BIOLOGICAL SCIENCES AND THE PRITZKER SCHOOL OF MEDICINE.

Respectfully submitted,

STUART BERNSTEIN,
MICHAEL F. ROSENBLUM,
SUSAN S. SHER,
Attorneys for defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 C 2402

[Heading Omitted]

AFFIDAVIT OF JOSEPH CEITHAML

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

JOSEPH CEITHAML, being first duly sworn, on oath deposes and says:

1. I am one of the named defendants in the above-entitled action. I am the Dean of Students in The University of Chicago Division of the Biological Sciences and the Pritzker School of Medicine ("the Medical School") and Professor of Biochemistry. I am the Director of Admissions and a member of the Committee on Admissions to the Medical School. I participate in deliberations leading to the selection, advancement and graduation of students. I have been Dean of Students and a member of the Committee on Admissions for the past 25 years. I have full knowledge of the facts set forth herein.

2. The number of students who can be admitted to the Medical School is limited by laboratory facilities, material and equipment, and faculty. These limitations are specifically evident in the gross anatomy, histology, and neurobiology courses in the first year of study, and in the general pathology and clinico-patho-physiology courses in the second year of study. The administration of the Medical School, in consultation with the faculty, has determined that the maximum number of students that can

be admitted to the Medical School each year within the limits of existing facilities is 104, and the Committee on Admissions, which is responsible for the selection of students for admission to the Medical School, has been so instructed. Precisely 104 students have been admitted as first year students each year since 1972.

3. The Committee on Admissions is composed of ten members of the faculty of the Medical School. The general requirements for admission to the Medical School, procedures for admission and selection policy are set forth in a bulletin which is sent on inquiry to any potential applicant and is sent as a matter of course to all applicants. A copy of this bulletin is attached hereto as Exhibit A. This bulletin includes the following statement:

"The Committee believes that questions of race, religion, sex, national origin, or geographic location are not valid criteria for the selection of students; therefore, these factors have no bearing on the consideration of any applicant."

The bulletin further states:

"... The admission procedure involves first a preliminary screening of all applicants on the basis of their intellectual qualifications. This is done to insure, in so far as is possible, that all applicants selected are capable of maintaining high academic standards. The student's scholastic record, along with his Medical College Admission Test scores, are used in this procedure."

4. All applicants for admission to the Medical School must meet the minimum qualifications for admission as set forth in the attached bulletin. The function of the Committee on Admissions is to select from among the applicants those best qualified for admission. The number of applicants for admission and the number selected for

admission, by sex, for the academic years 1972 to and including 1975 is as follows:

	Applicants			Admitted		
	Female	Male	Total	Female	Male	Total
1972	543	3,465	4,008	17	87	104
1973	765	4,054	4,819	18	86	104
1974	996	4,157	5,153	22	82	104
1975	1,172	4,154	5,427*	19	85	104

* 101 applications did not indicate sex.

5. To assist the Committee on Admissions in evaluating the Medical College Admission Test ("MCAT") scores, one of the criteria relied upon in the preliminary screening described in paragraph 3 above, the scores of all applicants to the Pritzker School of Medicine are ranked with respect to each other on a decile scale. Decile 1 signifies that the score is in the highest ten percent bracket of all applicant scores; decile 2 signifies that the score is within the second ten percent bracket, *i.e.*, that from 11% to 20% of all other scores are higher than those within decile 2.

6. The application of plaintiff Geraldine G. Cannon was eliminated at the preliminary screening described in paragraph 3 above upon examination by two members of the Committee on Admissions, one of whom was me. The two Committee members acted independently in arriving at the decision. My decision was based on the following factors:

The grade point average of Ms. Cannon as an undergraduate student in the critical area of basic science (which includes chemistry, biology, physics and mathematics) was 3.17 out of a possible 4. By way of comparison, the average grade point average in basic science for the entering class of 1974 was 3.7.

The MCAT score of Ms. Cannon in science was in decile 6, *i.e.*, from 51% to 60% of all other applicants to the Medical School had higher science test scores.

The MCAT score of Ms. Cannon in Quantitative Ability (mathematical skills) was in decile 9, *i.e.*, from 81% to 90% of all other applicants to the Medical School had higher mathematics test scores.

7. None of the factors of Ms. Cannon's age, sex and lack of advanced academic degree entered into my decision regarding the elimination of her application at the preliminary screening. This decision was based solely on the criteria described in the attached bulletin as set forth in paragraph 3 above.

8. The Committee on Admissions received 5,427 applications for the 104 places available for the class entering the Medical School in the fall of 1975. Of those applicants not offered an acceptance, there were at least 2,000 who had better academic qualifications than did Ms. Cannon.

9. By letter dated on or about February 19, 1975, Ms. Cannon was advised that she was not among the applicants accepted for admission to the Medical School. A copy of the form of letter sent to her is attached hereto as Exhibit B. By letter dated March 5, 1975, Ms. Cannon wrote to me inquiring as to the reason for this decision. A copy of this letter is attached as Exhibit C. I replied to this inquiry by letter dated April 10, 1975. A copy of this letter is attached hereto as Exhibit D.

10. Neither the State of Illinois nor any agency of the State of Illinois has participated in or influenced, or attempted to participate in or influence, the Committee on Admissions in the establishment of criteria for admission to

the Medical School or the selection of applicants for admission to the Medical School.

/s/ JOSEPH CEITHAML
Joseph Ceithaml

Subscribed and sworn to before me this day of
, 1975.

[NOTARIAL SIGNATURE AND SEAL]

Notary Public

Exhibit A

THE UNIVERSITY OF CHICAGO
THE PRITZKER SCHOOL OF MEDICINE
INTRODUCTION

The University of Chicago Pritzker School of Medicine provides for its students a rigorous and excellent program of studies designed to prepare its graduates for distinguished careers in medicine. Emphasis is placed on the scientific basis of medicine and on the skillful application of scientific principles to human problems. In order to maintain a high ratio of teachers to students, thus insuring for the latter a maximum of individual attention, each entering class is limited to 104 students. Those who manifest interest and aptitude in research are encouraged in this direction and are afforded opportunities and facilities to engage in investigation under proper supervision of sponsorship. These research opportunities can be arranged along with the regular medical studies by utilizing elective time and summer vacations, or may be scheduled in continuous periods of a year or more intervening between regular terms of medical study.

The School of Medicine, established in 1927, is unique in several respects. First, located with its hospitals and basic science laboratories on the campus of the University, it is an integral part of the Division of Biological Sciences. This arrangement permits medical students to take course work in related fields in addition to their medical school work if they so wish. The medical curriculum permits, but does not require, participation by the student in research activities.

The medical school offers a variety of M.D./Ph.D. programs of study to its students. All of these programs combine the breadth of an excellent medical education with the depth of

a rigorous graduate research program. Usually a student first completes 1 or 2 years of medical studies before embarking on a dual degree program. These various M.D./Ph.D. programs usually require 6 calendar years of study.

Second, students receive their clinical training primarily in the University Hospitals, ten interconnected units with a total bed capacity of 670. Finally and perhaps most significantly, the University of Chicago Pritzker School of Medicine is the only medical school in the country with a completely full-time clinical teaching staff in its University Hospitals where every one of the clinical teachers devotes all of his time to teaching medical students, to the care of patients, and to medical research. This constant presence of the clinical teaching staff under the full-time plan provides unusual opportunities for intensive training at the bedside and for the development of a close teacher-student relationship. Students are eligible to do clinical work at Michael Reese Hospital, which is affiliated with the Pritzker School of Medicine.

REQUIREMENTS FOR ADMISSION TO THE PRITZKER SCHOOL OF MEDICINE

A prospective medical student must have a good foundation in general education including work in the social sciences, humanities, mathematics, physical sciences and biological sciences. Besides securing an understanding of the general principles in the various fields of knowledge and of their respective contributions to our cultural heritage, applicants must also fulfill a minimum number of specific science prerequisites which provide the scientific concepts and information upon which medical studies are based. The student is not required to have mastered a foreign language or to have taken advanced science courses, although study in depth in any specialized field of knowledge, scientific or non-scientific will

make the student a more desirable applicant. Moreover, for students interested in research, courses in the calculus, genetics, physical chemistry, analytical chemistry, statistics and the like are especially desirable. However, such advanced courses are recommended only when they are not taken at the expense of an adequate background in the non-science areas. The specific requirements for admission include:

1. No less than three academic years of college (a minimum of 90 semester hours or 135 quarter hours). This must include:

Semester Hours
(a) *Chemistry (including general and aliphatic and aromatic organic) 16
*Biology (including at least 8 semester hours with laboratory) 12
*Physics (with laboratory) 8
(b) *Studies in social sciences, humanities, English composition, and mathematics.

* Advanced standing which has been officially granted to an applicant by his college in any of these subjects will be recognized by our Committee on Admissions as partially fulfilling these requirements for admission.

2. Medical College Admissions Test. This test is required of all applicants. It is administered by The American College Testing Program, Post Office Box 451, Iowa City, Iowa 52240. Arrangements for taking this test should be made by the student through his premedical advisor or directly with The American College Testing Program. The test is given nationally once in the spring and again in the autumn.

PROCEDURE FOR ADMISSION

Since the medical school participates in the centralized application service, a student seeking admission to the Pritzker School of Medicine must apply through the American Medical

College Application Service (AMCAS). Applicants may secure AMCAS application request forms from their premedical advisors or from our medical school's Dean of Students Office. After the application form has been completed, it should be sent to AMCAS which will process the application and then forward a copy of it to the medical school. A University of Chicago Supplementary Application will then be automatically sent to the applicant. Official transcripts should be sent directly to AMCAS. Transcripts should not be sent to our Dean of Students Office unless requested by the Committee on Admissions. Letters of recommendation should be requested by the applicant to be sent to the medical school. The applicant's file is not complete until both applications with all questions answered fully, and all materials requested, including letters of recommendation, have been received. When complete, the application file is referred to the Dean of Students for consideration by the Committee on Admissions to the Medical School. Applications should be on file approximately twelve months before the desired time of admission. Our deadline for filing an AMCAS application is November 30. Applicants are usually notified of the final action of the Committee some time between November and April.

At the time an applicant is selected for admission and has paid his deposit to reserve a place in the next entering class, he will be sent a health history form to fill out. After he completes his college studies, he will be requested to provide an official transcript of his entire college academic record. Then during orientation week in the autumn, there will be a health survey and physical examination of each member of the class by the Student Service of the University of Chicago.

SELECTION POLICY

The number of qualified applicants for admission to the Pritzker School of Medicine greatly exceeds its facilities. Therefore, all applicants cannot be admitted, even though their

records may meet the specified requirements. The responsibility of the Committee on Admissions is to select from among the many hundreds of applicants those who are best qualified for, and who will benefit most by, the program of medical education in this school. The Committee strives to make its decision on the basis of the ability, achievement, personality, character, and motivation of the candidates. The Committee believes that questions of race, religion, sex, national origin, or geographic location are not valid criteria for the selection of students; therefore, these factors have no bearing on the consideration of any applicant.

In actual practice, the admission procedure involves first a preliminary screening of all applicants on the basis of their intellectual qualifications. This is done to insure, in so far as possible, that all applicants selected are capable of maintaining high academic standards. The student's scholastic record, along with his Medical College Admission Test scores, are used in this procedure. From the group of applicants judged capable of meeting the academic standards of the School, final selection is made on the basis of the personal qualifications of the applicants. Honesty, intellectual curiosity, imagination, co-operativeness, friendliness, and a willingness to work long hours are a few of the desired qualities. Participation in college extracurricular activities, including athletics, often represents a desirable attitude in applicants and frequently indicates their ability to work co-operatively. Since no tests can measure adequately the personal qualifications of an applicant, the Committee relies heavily upon the reports from premedical committees, premedical advisors, instructors, and others who may know the student well and who write to us on his behalf. The proper selection of applicants is of significance not only to the University of Chicago but to the public as well.

Whenever it seems desirable, arrangements are made for the applicants to have personal interviews with members of the faculty of the School of Medicine or with its representatives

located in various parts of the country. Such interviews are arranged by the Committee on Admissions and are not the responsibility of the applicant.

Since a student need not have completed all the pre-medical requirements in order to have his application considered by the Committee on Admissions, an admission offer is always contingent upon the successful completion of academic work in progress and the continued maintenance of a satisfactory scholastic record. A student who has not completed all his required premedical courses at the time he submits his application must have a plan for completing them before the beginning of work in the next entering freshman medical class.

SELECTIVE SERVICE POLICY

Any applicant offered a place in our medical school, upon his request to the Registrar of the University of Chicago, may secure a certified statement of his acceptance which he may then send to his Local Selective Service Board, if he so wishes.

MEDICAL PROGRAM

One class consisting of 104 students, is admitted each year in the Autumn Quarter, starting in September. Students will normally be graduated 45 months after matriculation. Students are in residence three of the four quarters the first two years and all four quarters in the final two years. The fourth year is completely elective and constitutes a culminating year of medical studies in which each student, with guidance provided by the teaching staff, plans his senior year of elective studies in accordance with his own individual academic needs and career goals. Entering medical students interested in applying for scholarship aid may do so only after receiving notification of

acceptance. Scholarship stipends vary according to the financial need of the applicant. Interest-free loans are also available to aid those students desirous of a medical education who do not have sufficient funds to finance it. Our policy is to select students with great care and then to do everything possible to help them complete their medical education.

JOSEPH CEITHAML
Dean of Students
The Pritzker School of Medicine
950 East 59th Street
Chicago, Illinois 60637

Exhibit B

[HEADING OMITTED]

Our Committee on Admissions has completed its consideration of your application for admission to our School of Medicine. We are sorry to inform you that you were not among the applicants selected for admission. The Committee regrets that it can accept only a limited number of medical students each year from among the large numbers of students who apply. Our action is not intended to discourage your interest in further study, and we hope you will be successful in gaining admission elsewhere.

Sincerely yours,

JOSEPH CEITHAML

Joseph Ceithaml
Dean of Students
 Biological Sciences

JC/iih

Exhibit C

2420 The Strand
 Northbrook, Illinois 60025

March 5, 1975

Dr. Joseph Ceithaml
 University of Chicago
 The Pritzker School of Medicine
 950 East 59th Street
 Chicago, Illinois 60637

Dear Dr. Ceithaml:

I was disappointed to receive your letter concerning my application to the University of Chicago Pritzker School of Medicine because my college grade point average and MCAT scores appeared to be well within the published range for such academic qualifications.

I would appreciate knowing of the reasons for the decision.

Yours very truly,

GERALDINE CANNON

Exhibit D

April 10, 1975

Mrs. Geraldine Cannon
2420 The Strand
Northbrook, Illinois 60025

Dear Mrs. Cannon:

In response to your letter of March 5, 1975 I regret to inform you that although your academic credentials were good they fell far below the level of the accepted students in our next entering medical class. Annually the competition for places in our entering class is extremely keen and this year was no exception for we had in excess of 5,400 applicants for the 104 places we had to offer.

In closing I appreciate your desire to study medicine and I am sorry that you did not qualify for a place in our entering class.

Sincerely yours,

JOSEPH CEITHAML
Dean of Students
Biological Sciences

JC:ems

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action

No. 75 C 2402

[Title Omitted]

**MOTION OF DEFENDANTS TO DISMISS THE
AMENDED AND SUPPLEMENTAL COMPLAINT OR, IN
THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendants, by their attorneys, move to dismiss the amended and supplemental complaint or, in the alternative, for summary judgment, on the following grounds:

(a) Jurisdiction is claimed under (i) the Civil Rights Act of 1871, 42 U.S.C. § 1983, (ii) the Education Amendments of 1972, 20 U.S.C. § 1681, and (iii) the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 626(c). The Court has previously determined that the initial complaint filed herein, which claimed jurisdiction under (i) and (ii) above, be dismissed for want of jurisdiction. The amended and supplemental complaint presents no additional material which brings this action within the purview of the Civil Rights Act of 1871; the Court has previously held that The Education Amendments of 1972 do not create a private right of action. The Court, therefore, lacks subject matter jurisdiction with respect to the claims under the Civil Rights Act of 1871 and The Education Amendments of 1972.

(b) The amended and supplemental complaint fails to state a claim upon which relief can be granted with respect to the claim of jurisdiction under the Age Discrimination in Employment Act of 1967. That Act is

applicable only to claims of discrimination in employment and the amended and supplemental complaint makes no allegation that plaintiff has sought and been denied employment with or through defendants. To the contrary, the basis of the complaint is that plaintiff has been denied admission as a student to the Pritzker School of Medicine of The University of Chicago, a claim not within the purview of the Age Discrimination in Employment Act.

(c) Alternatively, defendants are entitled to judgment as a matter of law; the gist of the complaint is that the policy manifest in the statement respecting The University of Chicago Pritzker School of Medicine appearing in the Association of American Medical Colleges Information Booklet that applicants over 30 without advanced degrees are not encouraged to apply discriminates on the basis of sex against plaintiff, a female over 30 without an advanced degree, because, it is alleged, relatively fewer women than men over 30 have advanced degrees; the facts are that plaintiff's application for admission to the Pritzker School of Medicine was considered on its merits and was eliminated from further consideration solely because of plaintiff's academic record and her Medical College Admission Test scores; sex, age, and lack of advanced degree were not factors in the screening of plaintiff's application; there is no genuine issue as to any material fact.

In support of this motion, defendants submit by reference the affidavits previously filed herein on August 18, 1975, of WALTER V. LEEN, Secretary of the Board of Trustees of The University of Chicago and general counsel of The University of Chicago; HAROLD E. BELL, Vice President-Comptroller of The University of Chicago; and JOSEPH CEITHAML, Dean of Students, Division of the Biological Sciences and the Pritzker School of Medicine.

Respectfully submitted,

STUART BERNSTEIN,
MICHAEL F. ROSENBLUM,
SUSAN S. SHER,
Attorneys for defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

75 C 2724

[Title Omitted]

**MOTION OF DEFENDANTS
TO DISMISS COMPLAINT**

Defendants, by their attorneys, move to dismiss the complaint on the grounds that it fails to state a claim upon which relief may be granted and that the Court lacks jurisdiction over the subject matter. In support of their Motion, defendants herewith submit a Memorandum.

WILLIAM H. THIGPEN
THOMAS H. MORSCH
LAWRENCE I. KIPPERMAN

By _____
One of the Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 C 2724

[Title Omitted]

**MOTION OF DEFENDANTS TO DISMISS
THE AMENDED AND SUPPLEMENTAL COMPLAINT**

Defendants, by their attorneys, move to dismiss the Amended and Supplemental Complaint on the grounds that it fails to state a claim upon which relief may be granted and that the Court lacks jurisdiction over the subject matter.

WILLIAM H. THIGPEN
THOMAS H. MORSCH
LAWRENCE I. KIPPERMAN

By _____
One of the Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Civil Action

No. 75C 2402

[Title Omitted]

A N S W E R

Now comes the defendant, the United States Department of Health, Education, and Welfare answering the complaint previously filed herein and states as follows:

1. With respect to the allegations contained in paragraph 1, relating to the statutory authority cited, to invoke the jurisdiction of this Court, defendant does not admit to the jurisdiction as alleged under Title 28 United States Code sections 1331, 1343(3), 1343(4), 1345, 1346, 2201 and 2202.

(i) The defendant asserts that allegations contained in the amended and supplemental complaint do not establish the requisite state action necessary to grant jurisdiction to this court under the Civil Rights Act of 1871, Title 42 U.S.C., section 1983 as the court so held in its decision on the original complaint of September 11, 1975.

(ii) The defendant further asserts that the Civil Rights Act of 1964, Title 42 U.S.C. section 2000c-6 and 2000c-8 as amended by Title 9 of the 1972 Education Amendment does not give jurisdiction to this court of the subject matter. Under Title 9 as well as Title 6, judicial review of the Department's action is provided for after a final decision has been made on a

complaint filed with the Office of Civil Rights. An investigation of the complaint, a hearing and a final determination to terminate the federal assistance being received by the educational institution must precede the right to judicial review. Section 799 of the Public Health Service Act, Title 42 U.S.C. section 295h-9 requires assurances of nondiscrimination in any program of a recipient of federal assistance and therefore incorporates by reference the administrative procedure set forth in Titles 6 and 9 that must be pursued before the right to judicial review is available.

(iii) Defendant further denies that jurisdiction is invoked by section 7(c) of the Age Discrimination In Employment Act of 1967, Title 29, U.S.C. section 626(c) due to the fact that no finding of age discrimination has been made as of yet by the Secretary of the Department of Health, Education, and Welfare on the plaintiff's complaint.

(iv) Defendant also denies the allegation contained in the same paragraph that the Administrative Procedure Act, Judicial Review, Title 5 U.S.C. sections 702 and 703 can convey jurisdiction on this court because there is a "prior, adequate" specified statutory review proceeding available to the plaintiff in connection with the action taken by Health, Education, and Welfare and until final agency action has been taken, no judicial review is possible. In addition agency action is defined in section 704 of the Administrative Procedure Act as being final unless there is a different interpretation required by statute. Agency action on a charge of discrimination pursuant to Title 9 is not considered final until all the administrative steps cited above have been concluded. These administrative steps have not been completed at this time.

2. Defendant has no specific information as to the truth or falsity of the allegations contained in the plaintiff's paragraphs 2 to 4 and therefore demand strict proof of the same.

5. The defendant admits the allegation contained in plaintiff's paragraph 5 as the same relates to the Hon. David Matthews and Kenneth A. Mines individually and in their official capacities as Secretary of the Department of Health, Education, and Welfare and Regional Director of the office for Civil Rights. However, defendant does not have sufficient knowledge to respond to the allegation contained in the same paragraph as it relates to the other named defendants, individually and in their official capacities as officers and employees of the Pritzker School of Medicine, of the University of Chicago and therefore demand strict proof of the same.

6. Defendant has no specific information as to the truth or falsity of the allegations contained in plaintiff's paragraphs 6 through 42 and therefore demand strict proof of the same.

43. Defendant has no specific information as to the truth or falsity of the allegations contained in plaintiff's paragraph 43 because there has not been an investigation of the plaintiff's complaint from which a finding can be made of discrimination in violation of Title 9 and section 799 of the Public Health Service Act.

44. Defendant denies the allegation contained in plaintiff's paragraph 44 as it relates to the lack of a plain, adequate or complete remedy at law to redress the alleged wrongs complained of by plaintiff in her brief. Defendant further asserts that the Department of Health, Education, and Welfare is authorized under the 1972 Civil Rights Act as amended to provide an administrative procedural remedy to any individual who has filed a complaint of sex

discrimination with the Office of Civil Rights. The remedy provided under the Act includes investigation of a filed complaint, a finding on the discriminatory charges, a hearing and a termination of federal funding if voluntary compliance is not forthcoming from the education institution found to be in violation of the Act.

Despite the failure of Office of Civil Rights of the Department of Health, Education, and Welfare to act promptly on plaintiff's complaint, such delay is not evidence of a lack of remedy being available to plaintiff but is nothing more than the agency's administrative delay in acting on a complaint. However, defendant does not have sufficient knowledge to respond to other allegations contained in paragraph 44 as the same relates to the irreparable injury suffered by the plaintiff due to the lack of an investigation by the Department of Health, Education, and Welfare on plaintiff's complaint.

45. Defendant has no specific information as to the truth or falsity of the allegation contained in plaintiff's paragraph 45 as it relates to grants or loans made by the Secretary of Health, Education, and Welfare on the strength of assurances given by the recipient educational institution to refrain from discrimination in the conduct of its programs due to the lack of an investigation of plaintiff's charges.

46. Defendant admits to the allegations contained in plaintiff's paragraph 46 as the same relates to the Department's failure to promptly investigate the sex discrimination complaint, filed on April 18, 1975. However, defendant does deny each and every allegation contained in the same paragraph as it relates to plaintiff's present inability to obtain an administrative remedy from Health, Education, and Welfare. Although said defendant has failed in the past to accord plaintiff a swift response to her

complaint, such failure was due to an administrative decision made by the Secretary to suspend Title 9 investigations because federal regulations necessary to implement the 1972 Educational Amendments to the Civil Rights Act were in the process of being revised at that time.

WHEREFORE, the defendants ask that the alternative prayer for an injunction be denied and the case be remanded to the Secretary of Health, Education, and Welfare for the purposes of conducting a prompt investigation of the sex discrimination charge and to take further appropriate administrative action deemed necessary to lead to a final determination on the case by the Department.

Respectfully submitted,

SAMUEL K. SKINNER
United States Attorney

[HEADING OMITTED]

December 22, 1975

Frederick H. Branding, Esq.
Assistant U. S. Attorney
219 S. Dearborn Street
Chicago, Illinois 60604

Re: Cannon v. Univ. of Chicago, et al.*
75 C-2402

Dear Mr. Branding:

This will confirm our telephone conversation of Friday afternoon, December 19, 1975, in which you informed me that Mr. Kenneth A. Mines, Regional Director of the Office for Civil Rights of the Department of Health, Education & Welfare, proposes to conduct the administrative investigation in the above matter during the first half of January, 1976.

This will also confirm my response to you that in view of Mr. Mines' proposal as to the timing of such investigation, I shall refrain from presenting a motion that the court order the same prior to January 16, 1976.

Thank you for your efforts in moving this matter along.

Very truly yours,

JOHN M. CANNON

JMC:GD

cc: Hon. Julius J. Hoffman
Stuart Bernstein, Esq.

* A substantially identical letter was written in the North-western case.

The following documents are reprinted in their entirety in the Appendix attached to the Petition for Certiorari as follows:

	<u>Page</u>
(App. Pet. Cert.)	
Judgment of the Court of Appeals	A-1
Opinion of the Court of Appeals filed August 27, 1976	A-2
Rehearing Opinion of the Court of Appeals filed August 9, 1977	A-22
Letter from HEW dated June 2, 1976	A-35
Opinion of HEW Departmental Counsel dated September 17, 1974	A-37

United States Court of Appeals

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

October 3, 1977.

Before

Hon. THOMAS E. FAIRCHILD, Chief Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. WILBUR F. PELL, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. PHILIP W. TONE, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge
Hon. ROBERT A. GRANT, Senior District Judge*

Nos. 76-1238, 76-1239
GERALDINE G. CANNON,
Plaintiff-Appellant,
vs.
THE UNIVERSITY OF CHICAGO, et al.,
NORTHWESTERN UNIVERSITY, et al.,
Defendants-Appellees.

} On Petition for Rehearing

ORDER

Plaintiff-appellant has currently pending before the Court a petition for rehearing of the panel's decision on rehearing, a suggestion for a rehearing *en banc* of the panel's original decision, and a suggestion for rehearing *en banc* of the panel's decision on rehearing regarding the question of whether appellant has stated a claim to relief under Title IX of Public Law No. 92-318.

On consideration of the petition for rehearing, all the judges on the original panel have voted to deny rehearing.

* The Hon. Robert A. Grant, United States District Court for the Northern District of Indiana, is sitting by designation.

No judge in active service has requested a vote on appellant's suggestion for rehearing en banc of the entire case.

On consideration of the suggestion for rehearing en banc of the Title IX issue addressed in the panel's opinion on rehearing, a vote of the active members of the Court was requested, and a majority of the Court has voted to deny a rehearing en banc.**

Accordingly, IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

** Chief Judge Fairchild and Judge Swygert voted to grant rehearing en banc of the Title IX issue.